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15 *Attorneys for Defendant City of San Jose*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15 **Howard Jarvis Taxpayers Association;**  
16 Silicon Valley Taxpayers Association, Inc.;  
17 Silicon Valley Public Accountability Foundation;  
18 James Barry; and George Arrington,

19 Plaintiffs,

20 v.

21 **City of San Jose**, and all persons interested in the  
22 matter of San Jose Ordinance No. 30716,  
23 establishing an Annual Gun Harm Reduction Fee,

24 Defendants.

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**

[28 U.S.C. §§ 1331, 1367, 1441, 1446]

Complaint filed: March 7, 2022  
Complaint served: March 16, 2022  
Removal date: April 15, 2022

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C §§ 1331, 1367, 1441, and 1446, Defendant City of San Jose (“City”) hereby removes the above-captioned action from the Santa Clara County Superior Court to the United States District Court for the Northern District of California. In support of this Notice of Removal, the City states as follows.

## **I. INTRODUCTION**

1. On March 7, 2022, Plaintiffs Howard Jarvis Taxpayers Association, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation, James Barry, and George Arrington (collectively, “Plaintiffs”) commenced this action against the City in the Santa Clara County Superior Court, assigned Case No. 22CV395596, with the filing of a complaint titled “Complaint to Invalidate §§ 10.32.215 and 10.32.230(B) of Chapter 10.32 of the Title 10 of the San Jose Municipal Code” (“Complaint”), a copy of which is attached here as **Exhibit A**.

2. A copy of the state court docket sheet for this action, downloaded from the Santa Clara County Superior Court within 24 hours of the date and time this Notice of Removal is being filed, is attached here as **Exhibit B**.

3. The Complaint brings four causes of action: (1) “Violation of Constitutional Rights of Speech and Association” (under the First and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 2 and 3 of the California Constitution, *see* Compl. ¶ 17); (2) “Unconstitutional Condition” (under the Second Amendment to the U.S. Constitution and Article I, Section 1 of the California Constitution, *see id.* ¶ 21); (3) “Special Tax Lacking Voter Approval” (under Article XIII C, Sections 1 and 2 of the California Constitution, *see id.* ¶¶ 27, 29-30); and (4) “Unconstitutional Delegation of Power to Tax” (under Article XI, Section 11, and Article XIII, Section 31 of the California Constitution, *see id.* ¶ 36).

## **II. JURISDICTION AND BASIS FOR REMOVAL**

4. Removal jurisdiction exists in this matter under 28 U.S.C. §§ 1441(a) and 1446(a) because this case is a “civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a).

5. This Court has original jurisdiction under 28 U.S.C. § 1331 with respect to Plaintiffs’ claims that certain provisions of a City Ordinance violate their rights arising under federal law—namely, the First and Second Amendments to the U.S. Constitution, as applied to the City through the Fourteenth Amendment. *See* Compl. ¶¶ 17, 19, 21.

6. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 with respect to Plaintiffs’ other claims, which arise under California state law, because those other claims regard the same provisions of the same City Ordinance and are otherwise “so related to claims in the action within [the Court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367.

### III. VENUE AND INTRADISTRICT ASSIGNMENT

7. Removal to this Court is proper under 28 U.S.C. §§ 84(a), 1441(a), and 1446(a) because Santa Clara County Superior Court, where the Complaint was filed, is a state court within the Northern District of California.

8. Pursuant to Northern District of California Civil Local Civil Rule 3-2(c) and (e), this case should be assigned to the San Jose Division, as the alleged events giving rise to the action occurred in San Jose and concern the City of San Jose and its residents. *See* Compl. ¶¶ 4-6, 9, 19.

### IV. PROCEDURAL REQUIREMENTS

9. Plaintiffs served the City on March 16, 2022. *See* **Exhibit C** (Proof of Service). This Notice of Removal is being filed within 30 days of service, in accordance with 28 U.S.C. § 1446(b).

10. “[A] copy of all process, pleadings, and orders” served upon the removing defendant (i.e., the City) in this action are attached here as **Exhibit D**, in accordance with 28 U.S.C. § 1446(a).

11. A copy of this Notice of Removal is being filed with the Clerk of the Santa Clara County Superior Court and is being served on all adverse parties, through their counsel of record, in accordance with 28 U.S.C. § 1446(d).

12. “[A]ll defendants who have been properly joined and served” have joined or consented to the removal of this action, in accordance with 28 U.S.C. § 1446(b)(2)(A). The City is the only defendant that has been “properly joined and served” in this action for purposes of Section

1 1446(b)(2)(A). While the Complaint also names as defendants “all persons interested in the matter of  
2 San Jose Ordinance No. 30716” (Compl. ¶ 7), all such persons are nominal or unknown, and none of  
3 them are “defendants who have been properly joined and served” for purposes of the federal removal  
4 statute. *See Baker v. Wells Fargo Bank, N.A.*, No. 1:16-cv-01943, 2017 WL 931879, at \*3 (E.D. Cal.  
5 Mar. 9, 2017) (“the general requirement of consent does not apply to ‘nominal, unknown, or  
6 fraudulently joined parties’”).

7 **V. CONCLUSION**

8 WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant City of San  
9 Jose hereby removes this action from the Santa Clara County Superior Court to the United States  
10 District Court for the Northern District of California.

11  
12 Respectfully submitted,

13 Dated: April 15, 2022

**COTCHETT, PITRE & McCARTHY, LLP**

14  
15 By: /s/ Tamarah P. Prevost

16 Joseph W. Cotchett  
17 Tamarah P. Prevost  
18 Andrew F. Kirtley  
19 Melissa Montenegro

20 *Attorneys for Defendant City of San Jose*  
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# Exhibit A

JONATHAN M. COUPAL, State Bar No. 107815  
TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. DOUGHERTY, State Bar No. 255855  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814  
(916) 444-9950  
Email: tim@hjta.org

Attorneys for Plaintiffs

E-FILED  
3/7/2022 4:00 PM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
22CV395596  
Reviewed By: A. Villanueva

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

22CV395596

HOWARD JARVIS TAXPAYERS ASSN.,  
SILICON VALLEY TAXPAYERS ASSN.,  
SILICON VALLEY PUBLIC ACCOUNTA-  
BILITY FOUNDATION, JAMES BARRY,  
and GEORGE ARRINGTON,

Plaintiffs

v.

CITY OF SAN JOSE, and ALL PERSONS  
INTERESTED in the matter of San Jose  
Ordinance No. 30716, establishing an  
Annual Gun Harm Reduction Fee,

Defendants

No.

**COMPLAINT TO INVALIDATE  
§§ 10.32.215 AND 10.32.230(B) OF  
CHAPTER 10.32 OF TITLE 10 OF THE  
SAN JOSE MUNICIPAL CODE**

**Calendar preference per CCP § 867**

**PARTIES**

1  
2 1. Plaintiff Howard Jarvis Taxpayers Association (“HJTA”) is a nonprofit public  
3 benefit corporation, comprised of over 200,000 California members, organized and  
4 existing under the laws of California for the purpose, among others, of engaging in civil  
5 litigation on behalf of its members and all California taxpayers to ensure constitutionality  
6 in taxation. HJTA has members who reside in the City of San Jose, who legally own  
7 firearms, and who are subject to the Annual Gun Harm Reduction Fee that is the  
8 subject of this action.

9 2. Plaintiff Silicon Valley Taxpayers Association, Inc. (“SVTA”) is a nonprofit  
10 public benefit corporation, comprised of members who reside in Santa Clara County,  
11 organized and existing under the laws of California for the purpose of advocating the  
12 reduction of taxes and acting on behalf of its members to achieve its tax reduction  
13 goals. SVTA has members who reside in the City of San Jose, who legally own  
14 firearms, and who are subject to the Annual Gun Harm Reduction Fee that is the  
15 subject of this action.

16 3. Plaintiff Silicon Valley Public Accountability Foundation (“SVPAF”) is a  
17 nonprofit public benefit corporation, comprised of members who reside in Santa Clara  
18 County, organized and existing under the laws of California for the purpose of  
19 monitoring the policies and political actions of public officials in Santa Clara County to  
20 keep voters informed and residents represented in local decision-making. SVPAF has  
21 members who reside in the City of San Jose, who legally own firearms, and who are  
22 subject to the Annual Gun Harm Reduction Fee that is the subject of this action.

23 4. Plaintiff James Barry is a resident of San Jose who legally owns a firearm  
24 and is subject to the Annual Gun Harm Reduction Fee that is the subject of this action.

25 5. Plaintiff George Arrington is a resident of San Jose who legally owns a  
26 firearm and is subject to the Annual Gun Harm Reduction Fee that is the subject of this  
27 action.

6. Defendant City of San Jose (“City”) is a charter city located in Santa Clara County. The Annual Gun Harm Reduction Fee that is the subject of this action is a law of the City, which the City is responsible for enforcing. The City can sue and be sued under Government Code § 34501.

7. The remaining defendants are all persons interested in the matter of San Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee.

### **JURISDICTION AND CALENDAR PREFERENCE**

8. Plaintiffs bring this action under the validation statutes (Code of Civ. Proc. §§ 860, et seq.) because plaintiffs allege that the challenged Gun Harm Reduction Fee is a special tax, albeit not voter approved (see Gov. Code § 50077.5), and because defendant City may have already entered into a contract with a designated nonprofit organization (see Gov. Code § 53511). Jurisdiction will be established by personal service upon the City’s representative and publication of the summons in a newspaper of general circulation within the City of San Jose as required by the validation statutes. The action is entitled to calendar preference over all other civil matters under Code of Civil Procedure section 867.

### **FIRST CAUSE OF ACTION**

#### **(Violation of Constitutional Rights of Speech and Association)**

9. Ordinance No. 30716 was passed into law by the City Council of the City of San Jose on or about February 8, 2022. Ordinance No. 30716 added Part 6 to Chapter 10.32 of Title 10 of the San Jose Municipal Code, entitled “Reduction of Gun Harm – Liability Insurance Requirement and Gun Harm Reduction Fee” (hereafter “the Ordinance”).

10. The Ordinance requires any San Jose resident who owns a firearm to “obtain and continuously maintain in full force and effect a homeowner’s, renter’s or gun liability insurance policy ... specifically covering losses or damages resulting from any accidental use of the Firearm.” (San Jose Muni. Code § 10.32.210(A).) This



1 requirement of the Ordinance is not challenged herein.

2 11. The Ordinance also requires San Jose gun owners to pay an “Annual Gun  
3 Harm Reduction Fee” to a “Designated Nonprofit Organization” that the City Manager  
4 will designate from time to time. The amount of the annual fee “will be set forth in the  
5 schedule of fees and charges established by resolution of the City Council.” (Muni.  
6 Code § 10.32.215.) It is this fee that plaintiffs challenge herein.

7 12. “Designated Nonprofit Organization” is defined in the Ordinance as “an  
8 entity that qualifies as a nonprofit corporation under the federal internal revenue code  
9 and is designated pursuant to the City Manager’s authority under Section 10.32.235,”  
10 provided that “[n]o City official or employee shall sit on the board of directors of the  
11 Designated Nonprofit Organization.” (Muni. Code § 10.32.205(B).) Section 10.32.235,  
12 in subdivision (A)(2), delegates authority to the City Manager for “[d]esignation of the  
13 nonprofit organization that will receive the Gun Harm Reduction Fee.”

14 13. The Ordinance provides basic guidelines for expenditure of the fee by the  
15 nonprofit organization. It says, “expenditures may include, but are not necessarily  
16 limited to the following: (1) Suicide prevention services or programs; (2) Violence  
17 reduction or gender based violence services or programs; (3) Addiction intervention and  
18 substance abuse treatment; (4) Mental health services related to gun violence; or (5)  
19 Firearms safety education or training.” (Muni. Code § 10.32.220(A).)

20 14. The Ordinance further states, “The Designated Nonprofit Organization shall  
21 spend every dollar generated from the Gun Harm Reduction Fee, minus administrative  
22 expenses, exclusively for programs and initiatives designed to (a) reduce the risk or  
23 likelihood of harm from the use of firearms in the City of San Jose, and (b) mitigate the  
24 risk of physical harm or financial, civil, or criminal liability that a San Jose firearm owner  
25 or her family will incur through her possession of firearms.” (Muni. Code §  
26 10.32.220(C).)

27 15. Except for these basic guidelines, the Ordinance provides that “the City

1 shall not specifically direct how the monies from the Gun Harm Reduction Fee are  
2 expended.” (Muni. Code § 10.32.220(C).)

3 16. A gun owner’s failure to pay the required fee to the designated private  
4 organization is punishable by a fine (Muni. Code § 10.32.240(A)) and confiscation of  
5 the owner’s firearms (Muni. Code § 10.32.245).

6 17. The First Amendment of the United States Constitution, made applicable to  
7 the states through the Fourteenth Amendment, provides, “Congress shall make no law  
8 ... abridging the freedom of speech ... or the right of the people peaceably to  
9 assemble.” Article I, sections 2 and 3 of the California Constitution provide, “A law may  
10 not restrain or abridge liberty of speech,” and “The people have the right to ... assemble  
11 freely to consult for the common good.”

12 18. Liberty of speech includes the right to not speak and the right to not be  
13 forced by the government to support someone else’s speech, particularly when you  
14 disagree with their message. The right to assemble freely includes the right to  
15 associate with others around a common cause and the right to not be forced by the  
16 government to associate with or support someone else’s organization, particularly a  
17 group with which you would not voluntarily assemble.

18 19. By requiring San Jose gun owners to pay an Annual Gun Harm Reduction  
19 Fee to a private nonprofit organization that the City Manager will designate, the  
20 Ordinance forces San Jose gun owners to associate with or support that private group  
21 and to fund their message, in violation of the gun owners’ rights of free speech and  
22 association under the United States and California constitutions.

23 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Unconstitutional Condition)**

26 20. Plaintiffs repeat the allegations contained in Paragraphs 1 through 19  
27 above as though fully set forth herein.



1 tax imposed for specific purposes.” (Cal. Const., art. XIII C, § 1(d).) The Annual Gun  
 2 Harm Reduction Fee is imposed ostensibly for the purpose of reducing gun harm.  
 3 Therefore, it is a special tax.

4 30. Article XIII C, section 2(d) of the California Constitution provides, “No local  
 5 government may impose, extend, or increase any special tax unless and until that tax is  
 6 submitted to the electorate and approved by a two-thirds vote.”

7 31. The Annual Gun Harm Reduction Fee was not submitted to the electorate  
 8 or approved by a two-thirds vote.

9 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **(Unconstitutional Delegation of Power to Tax)**

12 32. Plaintiffs repeat the allegations contained in Paragraphs 1 through 31  
 13 above as though fully set forth herein.

14 33. Only the government possesses the power to tax.

15 34. The power to tax includes the power to collect taxes and appropriate tax  
 16 revenues.

17 35. Under the Ordinance, the Annual Gun Harm Reduction Fee will be collected  
 18 by the private nonprofit organization that the City Manager will designate. That revenue  
 19 will not be remitted to the City, but will be appropriated by the private organization. San  
 20 Jose Municipal Code section 10.32.220(C) states, “The Designated Nonprofit  
 21 Organization shall spend every dollar generated from the Gun Harm Reduction Fee,”  
 22 and “the City shall not specifically direct how the monies from the Gun Harm Reduction  
 23 Fee are expended.”

24 36. Under article XIII, section 31 of the California Constitution, the power to tax  
 25 may not be granted to a private entity. It provides, “The power to tax may not be  
 26 surrendered or suspended by grant or contract.” Similarly, article XI, section 11  
 27 prohibits the delegation of local powers to private entities. It prohibits “delegat[ing] to a

1 private person or body power to make, control, appropriate, supervise, or interfere with  
2 county or municipal corporation improvements, money, or property, or to levy taxes or  
3 assessments, or perform municipal functions."

4 37. The Ordinance unconstitutionally delegates some of the City's power to tax  
5 and appropriate tax revenues to a private organization, not answerable to the voters,  
6 that the City Manager will designate.

7 WHEREFORE, plaintiffs pray for judgment as set forth below:

8 **PRAYER**


9 Based on the foregoing allegations, plaintiffs pray for judgment against  
10 defendants as follows:

- 11 1. For an Order invalidating sections 10.32.215 and 10.32.230(B) of chapter  
12 10.32 of title 10 of the San Jose Municipal Code;  
13 2. For costs of suit including reasonable attorney fees; and  
14 3. For such other or further relief as the Court deems just and proper.

15 DATED: March 7, 2022.

16 Respectfully submitted,

17 JONATHAN M. COUPAL  
18 TIMOTHY A. BITTLE  
19 LAURA E. DOUGHERTY

20   
21 TIMOTHY A. BITTLE  
22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27

**VERIFICATION**

I, Timothy A. Bittle, am the Director of Legal Affairs for the Howard Jarvis Taxpayers Association, one of the plaintiffs in this action, and authorized to sign this Verification on the Association's behalf. The other plaintiffs are absent from the County of Sacramento where I have my office, and I make this verification for that reason as well.

I have read the attached complaint. Except as to matters stated on information and belief, the allegations contained in the complaint are true of my own knowledge and, with regard to those matters stated on information and belief, I believe them to be true.

I declare, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Sacramento, California.

DATED: March 7, 2022.

  
TIMOTHY A. BITTLE

# **Exhibit B**

## 22CV395596

Print

## Howard Jarvis Taxpayers Association et al vs All Persons Interested in the matter of San Jose Ordinance No. 30716, et al

## Case Information

**Case Type:** Other Complaint (Not Spec)  
 Unlimited (42)  
**Case Number:** 22CV395596  
**Filing Date:** 3/7/2022  
**Case Status:** Active  
**Court Location:** Civil

## PARTIES

## EVENTS

## HEARINGS

Show All ▾ entries

Search: 

▾ Type	First Name	Middle Name	Last Name
Defendant			All Persons Interested in the matter of San Jose Ordinance No. 30716,
Defendant			City of San Jose
Plaintiff			Howard Jarvis Taxpayers Association
Plaintiff	James		Barry
Plaintiff	George		Arrington
Plaintiff			Silicon Valley Taxpayers Association
Plaintiff			Silicon Valley Public Accountability Foundation

Showing 1 to 7 of 7 entries

Previous **1** Next

## Attorneys

Show All ▾ entries

Search: 

▾ Representing	First Name	Middle Name	Last Name
Howard Jarvis Taxpayers Association	Timothy	Arthur	Bittle
Silicon Valley Public Accountability Foundation	Timothy	Arthur	Bittle
Silicon Valley Taxpayers Association	Timothy	Arthur	Bittle
George Arrington	Timothy	Arthur	Bittle
James Barry	Timothy	Arthur	Bittle

Showing 1 to 5 of 5 entries








Previous **1** Next

Show All ▾ entries

Search: 

▾ File Date	File Type	Filed By	Comment	Documents
4/14/2022	Proof of Service: Summons DLR (Civil)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Proof of Published Service of Summons on "All Persons Interested"	
3/25/2022	Order: Ex Parte	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	GRANTED Order Approving Publication of Summons	
3/24/2022	Proof of Service	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,		



File Date	File Type	Filed By	Comment	Documents
3/24/2022	Ex Parte Application - Notice Required	Timothy Bittle, Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	for Order Approving Publication of Summons; Declaration of Timothy Bittle; Memorandum of Points and Authorities	
3/22/2022	Opposition/Objections	City of San Jose,	to Ex Parte Application for Order Approving Publication of Summons	
3/22/2022	Request: Judicial Notice	City of San Jose,	In Support of Opposition to Ex Parte Application for Order Approving Publication of Summons	
3/18/2022	Proof of Service: Summons DLR (Civil)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Proof of Service of Summons	
3/7/2022	New Filed Case			
3/7/2022	Complaint (Unlimited) (Fee Applies)	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Complaint to Invalidate Sections 10.32.215 and 10.32.230(B) of Chapter 10.32 of Title 10 of the San Jose Municipal Code	
3/7/2022	Civil Case Cover Sheet	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Civil Case Cover Sheet	
3/7/2022	Summons: Issued/Filed	Howard Jarvis Taxpayers Association, James Barry, George Arrington, Silicon Valley Taxpayers Association, Silicon Valley Public Accountability Foundation,	Summons	

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[1](#)
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Show All  entriesSearch: 

Department	Type	Date	Time	Result
Department 20	Conference: Case Management	8/2/2022	3:00PM	

Showing 1 to 1 of 1 entries

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[1](#)
[Next](#)

# **Exhibit C**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy Bittle, 112300 Howard Jarvis Taxpayers Foundation 921 11th Street, Suite 1201 Sacramento, CA 95814 TELEPHONE NO.: (916) 444-9950 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY R. Fleming <b>Electronically Filed          by Superior Court of CA,          County of Santa Clara,          on 3/18/2022 11:25 AM</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090	<b>Reviewed By: R. Fleming          Case #22CV395596          Envelope: 8543660</b>
PLAINTIFF/PETITIONER: Howard Jarvis Taxpayers Assn., et al. DEFENDANT/RESPONDENT: City of San Jose, et al.	CASE NUMBER: 22CV395596
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.:

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint, Alternative Dispute Information Sheet

3. a. Party served: City of San Jose

b. Person Served: Office of the City Clerk - Person Authorized to Accept Service of Process

4. Address where the party was served: 200 E Santa Clara St, Tower 14th Floor  
 San Jose, CA 95113

5. I served the party

- b. **by substituted service.** On (date): 03/16/2022 at (time): 1:58PM I left the documents listed in item 2 with or in the presence of: Toni Taber - Deputy City Clerk - Person In Charge Of Office  
 (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.  
 (4) A declaration of mailing is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:  
 d. on behalf of:  
 City of San Jose

under: CCP 416.50 (public entity)

**7. Person who served papers**

- a. Name: Joseph Hussey
- b. Address: One Legal - P-000618-Sonoma  
 1400 North McDowell Blvd, Ste 300  
 Petaluma, CA 94954
- c. Telephone number: 415-491-0606
- d. The fee for service was: \$ 153.00
- e. I am:  
 (3) registered California process server.  
 (i) Employee or independent contractor.  
 (ii) Registration No.: ps1611  
 (iii) County Santa Clara

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 03/16/2022

Joseph Hussey

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Timothy Bittle, 112300 Howard Jarvis Taxpayers Foundation 921 11th Street, Suite 1201 Sacramento, CA 95814 ATTORNEY FOR (Name): Plaintiff		TELEPHONE NO.: (916) 444-9950	FOR COURT USE ONLY	
		Ref. No. or File No.		
Insert name of court, judicial district or branch court, if any: Santa Clara - First Street 191 N. First Street San Jose, CA 95113-1090				
PLAINTIFF: Howard Jarvis Taxpayers Assn., et al.				
DEFENDANT: City of San Jose, et al.				
PROOF OF SERVICE BY MAIL				CASE NUMBER: 22CV395596

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 1400 N. McDowell Blvd, Petaluma, CA 94954.

On 03/17/2022, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCP 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable), I mailed copies of the:

Summons, Complaint, Alternative Dispute Information Sheet

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Petaluma, California, addressed as follows:

City of San Jose

Office of the City Clerk (or authorized staff)

200 E Santa Clara St, Tower 14th Floor

San Jose, CA 95113

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Fee for Service: \$ 153.00

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on 03/17/2022 at Petaluma, California.

One Legal - P-000618-Sonoma  
1400 North McDowell Blvd, Ste 300  
Petaluma, CA 94954

MBerry

Melissa Berry

OL# 17868464

# Exhibit D

JONATHAN M. COUPAL, State Bar No. 107815  
TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. DOUGHERTY, State Bar No. 255855  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814  
(916) 444-9950  
Email: tim@hjta.org

Attorneys for Plaintiffs

**FILED**  
MAR 23 2022

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. Sandovar DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

HOWARD JARVIS TAXPAYERS ASSN.,  
SILICON VALLEY TAXPAYERS ASSN.,  
SILICON VALLEY PUBLIC ACCOUNTA-  
BILITY FOUNDATION, JIM BARRY, and  
GEORGE ARRINGTON,

Plaintiffs

v.

CITY OF SAN JOSE, and ALL PERSONS  
INTERESTED in the matter of San Jose  
Ordinance No. 30716, establishing an  
Annual Gun Harm Reduction Fee,

Defendants

No. 22CV395596

**EX PARTE APPLICATION FOR ORDER  
APPROVING PUBLICATION OF  
SUMMONS; DECLARATION OF  
TIMOTHY BITTLE; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Department: 20  
Case Filed: March 7, 2022  
Trial Date: Not Set

Calendar preference per CCP § 867

**TELEPHONE APPEARANCE**

**EX PARTE APPLICATION**

Plaintiffs Howard Jarvis Taxpayers Association *et al.* hereby apply *ex parte* for an Order approving the form of, and the publication of, summons upon all persons interested in the matter of City of San Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee.

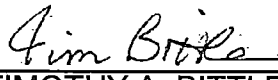
Plaintiffs have sued the City of San Jose ("City") to invalidate the new gun fee on the grounds that it violates their constitutional rights of free speech and association, places an unconstitutional condition on their right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

This application is made on the grounds that Government Code sections 50077.5 and 53511 require plaintiffs' lawsuit to be brought as a reverse-validation action against "all persons" under Code of Civil Procedure sections 860 *et seq.* Pursuant to Code of Civil Procedure sections 861, 861.1, and 863, all persons interested must be specially notified through published summons. The proposed form of published summons is attached to the accompanying proposed Order as Exhibit 1. Supporting this Application are the attached (1) Declaration of Timothy Bittle and (2) Memorandum of Points and Authorities.

DATED: March 17, 2022.

Respectfully submitted,

JONATHAN M. COUPAL  
TIMOTHY A. BITTLE  
LAURA E. DOUGHERTY

  
TIMOTHY A. BITTLE  
Attorneys for Plaintiffs

**DECLARATION OF TIMOTHY BITTLE**

I, Timothy Bittle, declare:

1. I am an attorney duly licensed by the State of California, admitted to practice before this Court, and counsel for plaintiffs in this action. I have personal knowledge of the facts to follow and if called as a witness, my testimony would be the same.

2. On March 17, 2022, at approximately 10:00 a.m., I called the San Jose City Attorney's Office, explained that I was calling to give notice of this ex parte application, and asked to speak with the deputy assigned to this case. I was informed that no deputy had yet been assigned, but that I could leave my message with Vada Burrow for City Attorney Nora Frimann. I was connected to Ms. Burrow's voicemail and I left a message that plaintiffs would be depositing this application in the Court's drop box on Monday, March 21, 2022, hoping for a hearing on Thursday, March 24, 2022. Shortly after hanging up, I sent the same message to the City Attorney's email address, cao.main@sanjoseca.gov, attaching a copy of the ex parte papers we would be filing.

3. Absent immediate approval of this ex parte application, plaintiffs will be unable to satisfy the publication and proof of service requirements of the validation statutes (Code of Civ. Proc. §§ 860 *et seq.*). To comply with these statutes, plaintiffs must: (1) arrange to have summons published once a week for three weeks in a newspaper of general circulation for the City of San Jose (Code of Civ. Proc. § 861; Gov. Code § 6063); then (2) obtain proof of publication from the newspaper; and (3) file the proof of publication as proof of service in this court – all within 60 days of the commencement of the action (Code of Civ. Proc. § 863; CRC Rule Rule 3-110(b)).

4. My office consulted the Court's list of newspapers of general circulation available on the Court's website and found that the Mercury News is a newspaper which has been adjudicated as a newspaper of general circulation in the City of San Jose. According to its website, it is the newspaper with the most print and online



1 subscribers in the City of San Jose.

2 I declare upon penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct and that this declaration was executed this 17<sup>th</sup> day of  
4 March, 2022, in Sacramento, California.

5   
6 TIMOTHY A. BITTLE

7  
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **STATEMENT OF FACTS**

10 This is a “reverse-validation action” brought under the validation statutes (Code  
11 of Civ. Proc. §§ 860, *et seq.*), which authorize an action to validate or invalidate acts of  
12 local governments. Plaintiffs assert that certain sections of Ordinance No. 30716,  
13 recently enacted by the San Jose City Council, are invalid.

14 The ordinance imposes a new Gun Harm Reduction Fee that all San Jose gun  
15 owners must pay annually to a private nonprofit organization to be designated by the  
16 City Manager. Plaintiffs’ complaint alleges that the new fee violates their constitutional  
17 rights of free speech and association, places an unconstitutional condition on the right  
18 to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates  
19 governmental taxing power to a private organization, and for these reasons is invalid.

20 Because this action is brought under the validation statutes, plaintiffs’ complaint  
21 names as defendants: (1) the City of San Jose, and (2) “all persons interested in the matter  
22 of San Jose Ordinance No. 30716, establishing an Annual Gun Harm Reduction Fee.”

23 Plaintiffs submitted their complaint for filing on March 7, 2022. It was processed  
24 for filing and given a case number on March 15, 2022, at which time the clerk also  
25 issued summons for the City.

26 Plaintiffs personally served the complaint and summons on the City via process  
27 server on March 16, 2022. This application to publish summons applies only to

1 unknown potential defendants named as “all persons interested.”

2 Code of Civil Procedure section 861 requires “all persons interested” to be  
 3 served via summons published once a week for three weeks in the Legal Notices  
 4 section of a newspaper of general circulation in the City of San Jose. Before plaintiffs  
 5 can publish summons, however, this Court must approve the form and wording of the  
 6 summons, and the proposed newspaper in which it will be published.

7 Because CRC Rule 3-110(b) and Code of Civil Procedure section 863 require  
 8 plaintiffs to serve all defendants “within 60 days after the filing of the complaint,” time is  
 9 of the essence.

## 10 ARGUMENT

### 11 A. Seeking This Order Ex Parte is Appropriate

12 Government Code section 50077.5 provides that the validation statutes apply “to  
 13 any judicial action or proceeding to validate, attack, review, set aside, void, or annul an  
 14 ordinance or resolution ... that levies a special tax.” Since plaintiffs’ complaint alleges  
 15 that the Annual Gun Harm Reduction Fee constitutes a special tax (albeit not approved  
 16 by the voters), Code of Civil Procedure sections 860 *et seq.* apply to this action.

17 Moreover, Government Code section 53511 provides that the validation statutes  
 18 apply “to determine the validity of [an agency’s] bonds, warrants, contracts, obligations  
 19 or evidences of indebtedness.” The City’s ordinance directs the City Manager to  
 20 designate a private nonprofit organization to collect and spend the Annual Gun Harm  
 21 Reduction Fee. Because plaintiffs are informed and believe that the City may have  
 22 already entered into a contract with a nonprofit organization for this purpose, Code of  
 23 Civil Procedure sections 860 *et seq.* apply to this action.

24 Section 861 provides that, “[j]urisdiction of all interested parties may be had by  
 25 publication of summons pursuant to Section 6063 of the Government Code in a  
 26 newspaper of general circulation designated by the court, published in the county where  
 27 the action is pending and whenever possible within the boundaries of the public

1 agency.” Section 861.1 requires that “[t]he summons shall be directed to ‘all persons  
2 interested in the matter of [specifying the matter].’” Government Code section 6063  
3 requires publication once a week for three weeks.

4 Section 863 provides that, “[i]n any such action the summons shall be in the form  
5 prescribed in Section 861.1 except that in addition to being directed to ‘all persons  
6 interested in the matter of [specifying the matter],’ it shall also be directed to the public  
7 agency. *If the interested person bringing such action fails to complete the publication  
8 and such other notice as may be prescribed by the court in accordance with Section  
9 861 and to file proof thereof in the action within 60 days from the filing of his complaint,  
10 the action shall be forthwith dismissed.*”

11 By statute, then, there is insufficient time to request approval of the form of  
12 summons and place of publication using a regular noticed motion. Plaintiffs must have  
13 time to schedule publication of the summons in the “legal notices” section of the  
14 newspaper, allow three weeks for publication, then obtain from the newspaper a “proof  
15 of publication” and file it with this court, all within the 60-day time limitation. Otherwise,  
16 absent an extension of time, the case will be dismissed.

17 **B. The Proposed Form of Publication Satisfies the Statute**

18 Code of Civil Procedure section 861 requires publication in “a newspaper of  
19 general circulation ... published in the county where the action is pending and whenever  
20 possible within the boundaries of the public agency.”

21 In this case, the Mercury News has been adjudicated as a newspaper of general  
22 circulation within the boundaries of the City of San Jose and is also the newspaper with  
23 the largest number of online and print subscribers.

24 Section 861.1 requires that, “the summons shall be in the form prescribed in Section  
25 412.20.” In a nutshell, section 412.20 requires the summons to include the following:

- 26 (1) The title of the court in which the action is pending.  
27 (2) The names of the parties to the action.

(3) A direction that, to be heard, the defendant must file a written response to the complaint within the time specified. (Section 861.1, in turn, provides that the time to respond "shall be 10 or more days after the completion of publication of the summons.")

(4) A notice that, unless the defendant so responds, plaintiff may apply for entry of default and the relief sought by the complaint.

(5) The following statement in boldface type: "You may seek the advice of an attorney in any matter connected with the complaint or this summons. Such attorney should be consulted promptly so that your pleading may be filed or entered within the time required by this summons."

(6) The following introductory legend at the top of the summons above all other matter, in boldface type, in English and Spanish: "Notice! You have been sued. The court may decide against you without your being heard unless you respond within [the time specified]. Read the information below."

The proposed form of summons attached as Exhibit 1 to the proposed Order contains all of the information required by section 412.20.


#### CONCLUSION

Due to the time constraints associated with a reverse-validation action, this ex parte application is appropriate. The proposed form of summons (attached to the proposed Order filed herewith), and the proposed newspaper (Mercury News) comply with the requirements of the applicable statutes. For these reasons, plaintiffs' ex parte application for approval should be granted.

DATED: March 17, 2022

Respectfully submitted,

JONATHAN M. COUPAL  
TIMOTHY A. BITTLE  
LAURA E. DOUGHERTY

  
TIMOTHY A. BITTLE  
Attorneys for Plaintiffs

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 TIMOTHY A. BITTLE, State Bar No. 112300  
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 Fax: (916) 444-9823  
 Email: tim@hjta.org  
 Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SANTA CLARA**

HOWARD JARVIS TAXPAYERS ASSN., ) No. 22CV395596  
 SILICON VALLEY TAXPAYERS ASSN., )  
 SILICON VALLEY PUBLIC ACCOUNTA- )  
 BILITY FOUNDATION, JIM BARRY, and )  
 GEORGE ARRINGTON, )

Plaintiffs

v.

CITY OF SAN JOSE, and ALL PERSONS )  
 INTERESTED in the matter of San Jose )  
 Ordinance No. 30716, establishing an )  
 Annual Gun Harm Reduction Fee, )

Defendants

**[PROPOSED] ORDER APPROVING  
 PUBLICATION OF SUMMONS**

Department: 20  
 Case Filed: March 7, 2022  
 Trial Date: Not Set

Calendar preference per CCP § 867

**ORDER**

On the application of plaintiffs, which was considered \_\_\_\_\_, 2022,  
in Department 20 with notice to counsel for defendant City of San Jose, the Court  
having considered the authorities cited and good cause appearing therefor:

IT IS HEREBY ORDERED that plaintiffs' application for approval to publish  
summons as to All Persons Interested in the matter of San Jose Ordinance No. 30716  
is GRANTED AS FOLLOWS:

1. Plaintiffs shall use the form of Summons attached hereto as Exhibit 1.
2. Plaintiffs shall cause the Summons to be published once a week for three  
consecutive weeks, with at least five days intervening between publication dates, in the  
Legal Notices section of the San Jose Mercury News.
3. Plaintiffs shall obtain Proof of Publication from said newspaper and file it  
with this Court immediately thereafter, or show good cause for their failure to do so.

DATED: \_\_\_\_\_, 2022.

\_\_\_\_\_  
HON. \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**EXHIBIT 1**

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN [A date to be determined that is 10 or more days after the completion of publication of the summons in the newspaper]. READ THE INFORMATION BELOW.**

**AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA [The date from above that is 10 or more days after the completion of publication of the summons in the newspaper]. LEA LA INFORMACIÓN QUE SIGUE.**

**TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.**

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City's Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response



1 to the complaint by [the date from above that is 10 or more days after the completion of  
2 publication of the summons in all newspapers]. If you do not file a timely written response  
3 with the court, plaintiffs may apply for entry of default and the relief sought by their  
4 complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using  
5 the address or telephone number shown below. If you respond to defend the legality or  
6 validity of the matter, you will not be subject to punitive action such as wage garnishment  
7 or seizure of real or personal property.

8  
9 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER**  
10 **CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY**  
11 **SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED**  
12 **OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.**

13  
14 **PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO**  
15 **RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO**  
16 **DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER**  
17 **PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN**  
18 **JUDICIAL.**

19  
20 The name and address of the Court is (El nombre y dirección del Tribunal es):

21  
22 Superior Court, County of Santa Clara

23 191 North First Street

24 San Jose, CA 95113

25 CASE NUMBER (Numero del Caso): 22CV395596  
26  
27

The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección y número de teléfono de los abogados del demandante es):

Timothy A. Bittle

Howard Jarvis Taxpayers Foundation

921 11<sup>th</sup> Street, Ste. 1201

Sacramento, CA 95814

Tel: 916-444-9950

JONATHAN M. COUPAL, State Bar No. 107815  
TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. DOUGHERTY, State Bar No. 255855  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814  
(916) 444-9950  
Email: tim@hjta.org

Attorneys for Plaintiffs

**FILED**  
MAR 23 2022

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. Sandoval DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

HOWARD JARVIS TAXPAYERS ASSN.,  
SILICON VALLEY TAXPAYERS ASSN.,  
SILICON VALLEY PUBLIC ACCOUNTA-  
BILITY FOUNDATION, JIM BARRY, and  
GEORGE ARRINGTON,

Plaintiffs

v.

CITY OF SAN JOSE, and ALL PERSONS  
INTERESTED in the matter of San Jose  
Ordinance No. 30716, establishing an  
Annual Gun Harm Reduction Fee,

Defendants

No. 22CV395596

**PROOF OF SERVICE**

Department: 20  
Case Filed: March 7, 2022  
Trial Date: Not Set

Calendar preference per CCP § 867

**PROOF OF SERVICE**

I, Kiaya Algea, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 921 11th Street, Suite 1201, Sacramento, California 95814. On March 17, 2022, I served:

• **EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS; DECLARATION OF TIMOTHY BITTLE; MEMORANDUM OF POINTS AND AUTHORITIES**

- **[PROPOSED] ORDER APPROVING PUBLICATION OF SUMMONS**
- **PROOF OF SERVICE**

on the interested parties below, using the following means:

**SEE ATTACHED SERVICE LIST**

X **BY U.S. MAIL** On the date listed above, I enclosed the documents in a sealed envelope or package addressed to the interested parties at their respective addresses listed below and deposited the sealed envelopes with the United States Postal Service, with the postage fully prepaid. The envelope or package was placed in the mail at Vacaville, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 17, 2022, at Vacaville, California.

  
Kiaya R. Algea

**SERVICE LIST**

Nora Frimann  
Office of the City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 95113  
Phone: (408) 535-1900

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Attorneys for CITY OF SAN JOSE

**FILED**  
 MAR 22 2022

Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY R. Samalva DEPUTY

**SUPERIOR COURT OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**  
**UNLIMITED JURISDICTION**

HOWARD JARVIS TAXPAYERS ASSN.,  
 SILICON VALLEY TAXPAYERS ASSN.,  
 SILICON VALLEY PUBLIC  
 ACCOUNTABILTY FOUNDATION, JIM  
 BARRY, and GEORGE ARRINGTON,

Plaintiff(s),

v.

CITY OF SAN JOSE, and ALL PERSONS  
 INTERESTED in the matter of San Jose  
 Ordinance No. 30716, establishing an Annual  
 Gun Har Reduction Fee,

Defendant(s).

Case Number: 22CV395596

**CITY OF SAN JOSE'S OPPOSITION  
 TO EX PARTE APPLICATION FOR  
 ORDER APPROVING PUBLICATION  
 OF SUMMONS**

Date: TBD

Time: TBD

Dept. 20

Judge: Hon. Socrates P. Manoukian

Trial Date: Not Assigned

**TELEPHONE APPEARANCE**

## I. INTRODUCTION

Defendant CITY OF SAN JOSE (“City”) opposes Plaintiffs’ *Ex Parte* Application for an Order Approving Publication of Summons and requests a hearing. The City’s request is made on the basis that Plaintiffs’ application fails to make the necessary affirmative factual showing of a statutory basis of granting relief *ex parte* under California Rule of Court 3.1202(c). Plaintiffs fail to articulate the necessary statutory basis for the court’s invocation of *in rem* jurisdiction, an obligatory precursor to the court ordering service by publication under California Code of Civil Procedure section 860. That is because Ordinance No. 30716, the San Jose Gun Harm Reduction Ordinance (“Ordinance”), is not the appropriate subject of a reverse validation action. Plaintiff’s citations to Government Code sections 50077.5 and 53511 are inapposite as the Ordinance contains no “special tax” as approved by the voters as required by section 50077.5, nor a “bond, warrant, contract, obligation or evidence of indebtedness” as enumerated in section 53511. For these reasons, and for those set out in further detail below, Plaintiff’s *ex parte* application must be denied.

## II. FACTUAL HISTORY

On February 8, 2022, the San Jose City Council adopted a first in the nation law requiring gun owners to purchase liability insurance and to invest funds generated from fees paid by owners into evidence-based initiatives to reduce gun violence and gun harm. (City of San Jose’s Request for Judicial Notice (“RJN”), Ex. 1.)

The Ordinance was based on findings of the impact of firearm injuries on the community. These findings included but were not limited to the following: that firearm injuries have a significant adverse public health and safety impact nationally; in the State of California, and locally, that between 2010-2014 in Santa Clara County, thirty-one percent of emergency department visits and sixteen percent of hospitalizations from firearms injuries were due to unintentional shootings; that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide, and more. (RJN, Ex. 1, pp. 5-7, § 10.32.200.)

1 The Ordinance requires that gun owners who reside in the City or possess a firearm in the City  
 2 purchase and maintain a renter's or homeowners' gun liability insurance policy. (See *Id.* at p. 7.) The  
 3 Ordinance contains an Annual Gun Harm Reduction Fee ("Fee"). (*Id.* at p. 8.) The Fee requires that gun  
 4 owners who reside or possess a firearm in the City pay an annual Fee to a to-be-designated nonprofit  
 5 each year which will be used by the nonprofit to provide services to residents of the City that own or  
 6 possess a firearm in the City or to members of their household. (*Id.* at pp. 8-9.) These expenditures may  
 7 include suicide prevention programs, violence reduction or domestic violence services or programs,  
 8 mental health services related to gun violence, or firearms safety education and training. (*Id.* at p. 9.) The  
 9 Fee will be set forth in the schedule of fees and charges established by resolution of the City Council.  
 10 (*Id.* at p. 8.) Neither the amount of the annual Fee nor the date by which payment will be required has  
 11 been set. (*Id.*)

12 The Ordinance additionally grants the City Manager the authority to promulgate all regulations  
 13 necessary to implement the requirements of the Ordinance, including but not limited to, the eventual  
 14 designation of the nonprofit organization that will receive the Fee. (*Id.* at p. 11, § 10.32.235.) The  
 15 Ordinance shall become effective at the expiration of one hundred eighty days after its adoption. (*Id.* at  
 16 p. 13.) The Ordinance also contains a severability clause. (*Id.*)

### 17 III. LEGAL STANDARD

18 A validation action is a lawsuit filed and prosecuted for the purpose of securing a judgment  
 19 determining the validity of a particular government action or act. (See *Blue v. City of Los Angeles* (2006)  
 20 137 Cal. App. 4th 1131, 1135, fn. 4.) California Code of Civil Procedure sections 860 through 870.5  
 21 govern validation actions. Section 860 states the following:

22 A public agency may upon the existence of any matter which under any other laws  
 23 authorized to be determined pursuant to this chapter, and for 60 days thereafter, bring  
 24 an action in the superior court of the county in which the principal office of the public  
 25 agency is located to determine the validity of such matter. The action shall be in the  
 26 nature of a proceeding in rem. (Cal. Proc. Code § 860.)



1 Section 863 authorizes “interested parties”, in a so called “reverse validation action”, to determine  
 2 the validity of a particular agency decision or action. (Cal. Proc. Code § 863.) The validation statutes  
 3 require an interested party to bring a reverse validation action within 60-days of the particular agency  
 4 decision or action. (See *Id.*; see also Cal. Proc. Code § 860.) A central theme in the validation procedures  
 5 is the speedy determination of the validity of the public agency’s decision or act in a single dispositive  
 6 final judgment, to promptly settle all questions about the validity of the agency’s decision or act. (See  
 7 *Davis v. Fresno Unified School District* (2020), 57 Cal. App. 5th 911, 928.)

8 However, not all acts or transactions of a public agency are subject to validation. (*Id.*) Section 860  
 9 does not specifically enumerate the actions which are subject to the validation process. Rather, courts  
 10 must examine other statutes, and cases examining those statutes, to determine the scope of agency  
 11 decisions and acts that are subject to validation under the validation statute. (*Id.*) California has over 200  
 12 statutes that provide validation proceedings, most of which are found in the Government Code and the  
 13 Water Code. (See *Kaatz v. City of Seaside* (2006), 143 Cal. App. 4th 13, 19.) As such, an interested party  
 14 in a reverse validation suit is required to articulate the specific statutory provision authorizing the use of  
 15 validation proceedings over the agency decision or action.

#### 16 IV. ARGUMENT

##### 17 A. **PLAINTIFFS’ *EX PARTE* APPLICATION FOR PUBLICATION FAILS TO ESTABLISH 18 THE NECESSARY STATUTORY BASIS FOR THE COURT’S INVOCATION OF *IN REM* JURISDICTION OVER THE ORDINANCE**

19 Validation actions are in rem proceedings. (See Cal. Proc. Code § 860). The California Supreme  
 20 Court has held that *in rem* jurisdiction only attaches if: (1) the court “has the authority to determine the  
 21 subject matter of the controversy”; and (2) the court “has jurisdiction over the thing proceeding against  
 22 as a defendant.” (*Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency*  
 23 (2016), 1 Cal. App. 5th 1084, 1100-1101 citing *Kearney v. Kearney* (1887) 72 Cal. 591, 594 (emphasis  
 24 added).) This framework applies to validation actions as well. (See *Id.*) As such, there is subject matter  
 25 jurisdiction to entertain a validation proceeding only if there is a statutory basis for that jurisdiction and  
 26 if the party seeking to invoke the validation procedures subsequently perfects that jurisdiction by

1 providing the proper type of constructive notice. (See *Id.*, citing *San Diegans for Open Government v.*  
 2 *City of San Diego* (2015) 242 Cal. App. 4th 416, 428 [failure to publish summons in accordance with  
 3 statutory procedures deprives the court of jurisdiction, which deprives the court of the power to rule upon  
 4 the matter.] )

5 Constructive notice alone is not enough to confer subject matter jurisdiction. (See *Id.* at 1101.)  
 6 As the appeals court stated in *Santa Clarita Org. for Planning & Environment*:

7 If [constructive notice alone] were [enough], a party could compel a court to issue  
 8 validation ruling merely by giving constructive notice of its complaint, even if its  
 9 complaint fell outside of any validation statute; such rogue validation actions would  
 10 eviscerate the legislature's careful effort to specifically delimit when these proceedings  
 11 are applicable.

12 (See *Id.*)<sup>1</sup>

13 **B. GOVERNMENT CODE SECTION 50077.5 DOES NOT APPLY**

14 Plaintiff cites to Government Code section 50077.5 in support of their argument that the ordinance  
 15 contains a "special tax" requiring the Plaintiffs to bring their action via the validation statute. (See  
 16 Plaintiffs' *Ex Parte* Application and Memorandum of Points and Authorities (hereinafter "Plaintiffs' *Ex*  
 17 *Parte* MPA"), p. 5, ln. 12-16). Disturbingly, in citing the statute, Plaintiffs omit key language. The  
 18 language of section 50077.5 subsection (a) is reproduced here in full without recourse to misleading  
 19 ellipses. It states the following:

20 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil  
 21 Procedure applies to any judicial action or proceeding to validate, attack, review,  
 22 set aside, void, or annul an ordinance or resolution approved by the voters

24 <sup>1</sup> That is exactly what Plaintiffs attempt to do here. Plaintiffs' articulation of Government Code sections  
 25 53511 and 50077.5 fails to confer subject matter jurisdiction on this Court as the Ordinance does not  
 26 contain a "special tax" under section 50077.5 nor a "contract" as required under section 53511. As  
 27 such, this Court has no authority to rule on this matter subject to the validation procedures, nor the  
 authority to order service by publication under section 863.

1            pursuant to this article on or after January 1, 1986, that leaves a special tax, or  
 2            modifies or amends an existing ordinance or resolution that levies a special tax.  
 3            (Gov't Code § 50077.5(a)).

4            Section 50077.5 requires further context. This section is a provision in Article 3.5 of Chapter 1,  
 5            Part 1, Division 1, Title 5 of the Government Code. Article 3.5 is comprised of Government Code sections  
 6            50075 through 50077.5, *i.e.*, the provision cited by Plaintiffs. Section 50077 addresses the content of the  
 7            special tax ordinance to be put to voters envisioned by Article 3.5.

8            Section 50077(a) states the following:

9            “[T]he legislative body of any city, county, or district may, following notice and  
 10            public hearing, propose by ordinance or resolution the adoption of a special tax.  
 11            The ordinance or resolution shall include the type of tax and rate of tax to be levied,  
 12            the method of collection, and the date upon which an election shall be held to  
 13            approve the levy of the tax.”

14            (Cal. Gov. Code § 50077(a); (b); (c) addressing the collection of the special tax and incorporation,  
 15            formation and reorganization issues related to special taxes).

16            It is within this statutory context that section 50077.5 addresses the Validation Statute. For section  
 17            50077.5 to apply, the “special tax” must have been adopted pursuant to Government Code sections 50075  
 18            through 50077.5. Here, as Plaintiffs concede in a parenthetical aside, the Ordinance’s proposed fee was  
 19            not undertaken, adopted, or implemented pursuant to those sections. Accordingly, section 50077.5 cannot  
 20            confer subject matter jurisdiction for validation proceedings over the Ordinance on this court. (See  
 21            *generally* RFJN, Exhibit 1.)

### 22            C.        GOVERNMENT CODE SECTION 53511 DOES NOT APPLY

23            Section 53511 specifically enumerates the actions subject to validation: “bonds, warrants, contracts,  
 24            obligations or evidences of indebtedness.” (See Gov’t Code § 53511). Plaintiffs claim that the  
 25            Ordinance’s direction that the City Manager designate a private nonprofit organization to collect and  
 26

1 spend the Annual Gun Harm Reduction Fee falls under the terms of section 53511, thus requiring  
2 validation. (See Plaintiffs' *Ex Parte* MPA, p. 5, ln. 17-23).

3 The Ordinance, only recently adopted on February 8, 2022, directs the City Manager to  
4 promulgate regulations to *designate* a nonprofit to perform these tasks. This direction is in plain contrast  
5 to Plaintiffs' baseless belief that a nonprofit has already been designated to perform these tasks.

6 Nevertheless, even were that not the case, the contract itself would not fall under the terms of the  
7 statute. Section 53511's enumerated list is construed narrowly by the courts (*e.g.*, only contracts  
8 involving an agency's financing and financial obligations fall within the statute). (See *Davis v. Fresno*  
9 *Unified School Dist.* (2020) 57 Cal. App. 5th 911.)

10 *Davis* is instructive. *Davis* involved, in part, construction contracts between Fresno Unified and  
11 a contractor to build new school facilities. (*Id.* at 918.) In these contracts, the school district paid for the  
12 construction of buildings as they were completed (as opposed to progress payments, etc.), an alternate  
13 approach which the court held could not be characterized as a method of financing the construction of  
14 new school facilities. (*Id.* at 940-41). The court explained that an "ordinary construction contract" did  
15 not fall under the terms of section 53511 as it did not provide the school district with any financing nor  
16 spread the district's obligation to pay for the new construction over a significant period of time. (*Id.* at  
17 941.) Even though the school district would pay the contractor with proceeds obtained from the sale of  
18 bonds, the Contractor was not a source of financing for the project. (*Id.*) As such, the use of bond funds  
19 did not support the plaintiff's conclusion that the contracts were in the nature or directly related to a  
20 public agency's bonds or other evidences of indebtedness. (*Id.*)

21 Accordingly, for section 53511 to apply to confer subject matter jurisdiction for a validation  
22 action, the statute requires that the contracts be more than just simple service agreements. Rather, they  
23 must be "directly related to a public agency's bonds or other evidences of indebtedness" for the statute  
24 to apply. (See generally, *Id.*)

25 Here, the Ordinance authorizes the City Manager to promulgate regulations necessary to  
26 implement the "designation of the nonprofit organization that will receive the Gun Harm Reduction Fee,

any processes and procedures related to the payment of the fee, and any additional guidelines or auditing the use of the monies from the fee.” (RFJN, Exhibit 1, § 10.32.235(A)(2).) There is no indication in the language of the Ordinance, nor have Plaintiffs advanced any argument thereon, that this designation constitutes a contract directly related to a public agency’s bonds or other evidences of indebtedness. Consequently, section 53511 cannot confer subject matter jurisdiction for validation proceedings over the Ordinance on this court.

### V. CONCLUSION

Plaintiffs fail to make the necessary showing under California Rule of Court 3.1202(c) of an initial statutory basis for invoking the validation procedures entitling them to proceed with service by publication. Consequently, this court has no authority to rule on the Ordinance under the validation procedures, nor the authority to order service by publication. Since the necessary initial statutory basis to confer *in rem* jurisdiction upon this court does not exist Plaintiff’s *ex parte* request for service by publication must be denied.

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

By: 

Joseph W. Cotchett  
Tamarah P. Prevost  
Melissa Montenegro

Attorneys for CITY OF SAN JOSE

Dated: March 21, 2022

**PROOF OF SERVICE**

CASE NAME: HOWARD JARVIS TAXPAYERS ASSN., et al.,v. CITY OF SAN JOSE

CASE NO.: 22CV395596

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On March 21, 2022, I caused to be served the within:

**CITY OF SAN JOSE'S OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING PUBLICATION OF SUMMONS**

☐ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ by PERSONAL DELIVERY, with a copy of this declaration, by causing to be personally delivered a true copy thereof to the person at the address set forth below.

☐ by FACSIMILE TRANSMISSION, with a copy of this declaration, to a facsimile machine at the facsimile machine telephone number listed below.

The above-described transmission was reported as complete without error by a transmission report issued by the facsimile machine immediately following the transmission.

☐ by ELECTRONIC SERVICE listed below, transmitted using the One Legal Process Service electronic filing system. The document(s) listed above was/were electronically served to the electronic address(s) below

☒ by ELECTRONIC TRANSMISSION, with a copy of this declaration, to an electronic address listed below.

I further declare that the electronic transmission was sent on March 21, 2022, before 5:30 p.m., and that the City of San Jose, City Attorney's electronic address is CAO.Main@sanjoseca.gov.

The above-described transmission was reported as sent by a transmission report available for printing from the computer.

☐ by EXPRESS MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ by OVERNIGHT DELIVERY, with a copy of this declaration, by depositing them into a sealed envelope/package, with delivery fees fully prepaid/provided for, and

☐ causing the envelope/package to be deposited for collection  
☐ causing the envelope/package to be delivered to an authorized courier or driver to receive the envelope/package

designated by the express service carrier for next day delivery.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for overnight delivery by an express courier service. Such correspondence would be deposited with the express service or delivered to the authorized express service courier/driver to receive an envelope/package for the express service that same day in the ordinary course of business.

Addressed as follows:

Jonathan M. Coupal Timothy A. Bittle Laura A. Dougherty Howard Jarvis Taxpayers Foundation 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Tel: (916) 444-9950 Email: <a href="mailto:tim@hjta.org">tim@hjta.org</a>  <i>Attorneys for Plaintiffs Howard Jarvis Taxpers Assn., Silicon Valley Taxpayers Assn., Silicon Valley Public Accountability Foundation, Jim Barry, and George Arrington</i>	
---	--

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2022, at San Jose, California.

*Brian Ward*

Brian Ward



Joseph W. Cotchett (SBN 36324)  
 Tamarah P. Prevost (SBN 313422)  
 Melissa Montenegro (SBN 329099)  
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Attorneys for CITY OF SAN JOSE

**FILED**  
 MAR 22 2022

Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY R. Sandoval DEPUTY

**SUPERIOR COURT OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**  
**UNLIMITED JURISDICTION**

HOWARD JARVIS TAXPAYERS ASSN.,  
 SILICON VALLEY TAXPAYERS ASSN.,  
 SILICON VALLEY PUBLIC  
 ACCOUNTABILTY FOUNDATION, JIM  
 BARRY, and GEORGE ARRINGTON,

Plaintiff(s),

v.

CITY OF SAN JOSE, and ALL PERSONS  
 INTERESTED in the matter of San Jose  
 Ordinance No. 30716, establishing an Annual  
 Gun Har Reduction Fee,

Defendant(s).

Case Number: 22CV395596

**CITY OF SAN JOSE'S REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 OPPOSITION TO EX PARTE  
 APPLICATION FOR ORDER  
 APPROVING PUBLICATION OF  
 SUMMONS**

Date: TBD

Time: TBD

Dept. 20

Judge: Hon. Socrates P. Manoukian

Trial Date: Not Assigned

**TELEPHONE APPEARANCE**

**CITY OF SAN JOSE'S REQUEST FOR JUDICIAL  
 NOTICE IN SUPPORT OF OPPOSITION TO EX  
 PARTE APPLICATION FOR ORDER  
 APPROVING PUBLICATION OF SUMMONS**

Case Number: 22CV395596



Pursuant to California Evidence Code sections 452, and 453, and California Rules of Court 3.1306(c), Defendant City of San Jose ("City") respectfully requests that the Court take judicial notice of the following documents attached hereto.

1. Ordinance No. 30716, "An Ordinance of the City of San Jose Adding Part 6 to Chapter 10.32 of Title 10 of the San Jose Municipal Code To reduce Gun Harm By Requiring Gun Owners to Obtain and Maintain Liability Insurance and Establishment of Annual Gun Harm Reduction Fee." A true and correct copy of this certified document is attached hereto as Exhibit 1. The Ordinance is the proper subject of judicial notice under Evidence Code section 452(b), which provides that the Court may take judicial notice of legislative enactments issued by any public entity in the United States.

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

By: 

Joseph W. Cotchett  
Tamarah P. Prevost  
Melissa Montenegro

Attorneys for CITY OF SAN JOSE

CITY OF SAN JOSE'S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF OPPOSITION TO EX  
PARTE APPLICATION FOR ORDER  
APPROVING PUBLICATION OF SUMMONS

2.

Case Number: 22CV395596



## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
200 East Santa Clara Street  
San José, California 95113  
Telephone (408) 535-1260  
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 30716**", the original copy of which is attached hereto, was passed for publication of title on the **25<sup>th</sup> day of January, 2022**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **8<sup>th</sup> day of February, 2022, with a bifurcated vote as follows:**

**Including Insurance Requirements; Excluding Sections 10.32.215, 10.32.220, and 10.32.230(b)**

AYES: ARENAS, CARRASCO, ESPARZA, COHEN, FOLEY, JONES,  
JIMENEZ, MAHAN, PERALEZ, LICCARDO.

NOES: DAVIS.

ABSENT: NONE.

DISQUALIFIED: NONE.

**Excluding Insurance Requirements; Sections 10.32.215, 10.32.220, and 10.32.230(b) only:**

AYES: ARENAS, CARRASCO, COHEN, ESPARZA, JONES, JIMENEZ, PERALEZ, LICCARDO.

NOES: DAVIS, FOLEY, MAHAN.

ABSENT: NONE.

DISQUALIFIED: NONE.

Said Ordinance is effective as of the **11<sup>th</sup> day of March, 2022**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **8<sup>th</sup> Day of February, 2022**.

(SEAL)

/rmk

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

NVF:TLC:KML  
2/3/2022

ORD. NO. 30716

**ORDINANCE NO. 30716**

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING  
PART 6 TO CHAPTER 10.32 OF TITLE 10 OF THE SAN  
JOSE MUNICIPAL CODE TO REDUCE GUN HARM BY  
REQUIRING GUN OWNERS TO OBTAIN AND MAINTAIN  
LIABILITY INSURANCE AND ESTABLISHMENT OF  
ANNUAL GUN HARM REDUCTION FEE**

**WHEREAS**, the Constitution of the United States of America affords certain protections to the ownership of firearms; and

**WHEREAS**, the United States Supreme Court has recognized that the Constitutional protections related to firearms ownership are not unlimited, and can be subject to certain types of governmental regulations; and

**WHEREAS**, a city's police power includes the power to regulate firearms and many courts throughout the nation have upheld local regulations related to the ownership or possession of firearms; and

**WHEREAS**, firearm injuries have a significant adverse public health and safety impact nationally, in the State of California, and locally; and

**WHEREAS**, each year more than 23,000 United States residents die by firearm suicide, 14,000 die by firearm homicide, and nearly 500 die from unintentional firearm injuries; and

**WHEREAS**, in California, between 2005 and 2015, nearly 4,000 children and teenagers were killed or injured with firearms, and 533 children and teenagers committed suicide with firearms, according to data from the Center for Disease Control and Prevention; and

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**WHEREAS**, the Santa Clara County Public Health Department issued a report on firearm injuries in April 2018. In 2016, 11% of injury deaths were due to firearms injuries. During the period 2007-2016, there were an average of 46 deaths per year due to self-inflicted/suicide from firearms injuries, and an average of 28 deaths per year due to assault/homicide from firearms injuries. Self-inflicted/suicide accounted for the highest percentage of deaths (59%) from firearms injuries, with assault/homicide accounting for 36% of deaths from firearm injuries; and

**WHEREAS**, the April 2018 Santa Clara County Public Health Department report on firearm injuries reported that during the period from 2010-2014, there were an annual average of 28 emergency department visits and 12 hospitalizations due to unintentional firearms injuries. During 2010-2014, 31% of emergency department visits and 16% of hospitalizations from firearms injuries were due to unintentional shootings; and

**WHEREAS**, research published in the American Journal of Epidemiology in 2004 found that regardless of storage practice, type of gun, or number of firearms in the home, having a gun in the home was associated with an increased risk of firearm homicide and firearm suicide in the home; and

**WHEREAS**, a 2014 review in the Annals of Internal Medicine suggests that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide; and

**WHEREAS**, a study in the New England Journal of Medicine in 2020 found that handgun ownership is associated with eight times greater likelihood for firearm suicide among men, and 35 times greater likelihood of firearm suicide among women; and

**WHEREAS**, according to the American Academy of Pediatrics, in homes with guns, suicide rates in children and adolescents and the likelihood of accidental death by shooting are each four times higher than in homes without guns; and

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**WHEREAS**, in the past decade, 40% of the suicides committed by children and teens involved guns, and 90% of these suicides were with guns that the victims accessed at their own homes or from a relative's home; and

**WHEREAS**, 58% of shooting deaths in children and teens are homicides, and the risk of homicide is three times higher when there are guns in the home; and

**WHEREAS**, a June 2014 report published by Everytown for Gun Safety and Moms Demand Action which analyzed publicly reported gun deaths nation-wide over a one-year period from December 15, 2012 to December 12, 2013, showed that at least 100 children were killed in unintentional shootings, amounting to nearly two each week; and

**WHEREAS**, according to research published in Social Science and Medicine in 2007 based on data over a three-year study period from 2001 to 2003, states with higher rates of household firearm ownership had higher rates of firearm homicide but not of non-firearm homicide, and this relationship held across gender, age, income and multiple other variables; and

**WHEREAS**, a study in the Journal of Urban Health conducted in 2015 estimated there are as many as 4.6 million children in the United States living in homes with loaded unsecured guns; and

**WHEREAS**, injuries from unintentional shootings, which are generally insurable, comprise more than a third of all gun-related injuries nationally; and

**WHEREAS**, in some instances, gun owners have been successfully sued for harm resulting from the use of the owner's firearm by themselves or a third party; and

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**WHEREAS**, auto insurers have used risk-adjusted premiums to reward good driving and incentivize use of airbags and other safety features, and by using a comprehensive public health approach to car safety the United States reduced per-mile auto fatalities by nearly 80% from 1967 to 2017; and

**WHEREAS**, similarly, insurance-based mechanisms can encourage firearm owners to take safety classes, use gun safes, install trigger locks, or utilize chamber-load indicators, and according to 2018 research published in The Actuary there is evidence that some actuaries and insurance companies are recognizing firearm-related risk through their product offerings, pricing and underwriting decisions; and

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** Chapter 10.32 of Title 10 of the San José Municipal Code is hereby amended by adding a Part to be numbered, entitled and to read as follows:

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## **Part 6**

### **REDUCTION OF GUN HARM – LIABILITY INSURANCE REQUIREMENT AND GUN HARM REDUCTION FEE**

#### **10.32.200 Purpose and Findings**

- A. This Part is passed and adopted in the exercise of the police power of the City, and for the protection of the welfare, peace and comfort of the residents of the City of San José. Specifically, it is the intent of this Ordinance to reduce gun harm.
- B. Findings:
1. Firearm injuries have a significant adverse public health and safety impact nationally, in the State of California, and locally; and
  2. Each year more than twenty-three thousand (23,000) United States residents die by firearm suicide, fourteen thousand (14,000) die by firearm homicide, and nearly five hundred (500) die from unintentional firearm injuries; and
  3. In California, between 2005 and 2015, nearly four thousand (4,000) children and teenagers were killed or injured with firearms, and five hundred thirty-three (533) children and teenagers committed suicide with firearms, according to data from the Center for Disease Control and Prevention; and
  4. During 2010-2014 in Santa Clara County, thirty-one percent (31%) of emergency department visits and sixteen percent (16%) of

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hospitalizations from firearms injuries were due to unintentional shootings; and

5. A 2014 review in the Annals of Internal Medicine suggests that access to firearms within the home doubles the risk that family members will become a victim of homicide, and triples the risk of suicide; and
6. A study in the New England Journal of Medicine in 2020 found that handgun ownership is associated with eight (8) times greater likelihood for firearm suicide among men, and thirty-five (35) times greater likelihood of firearm suicide among women; and
7. Based upon a November 2021 analysis by Dr. Ted Miller, Ph.D. and the Pacific for Institute Research and Evaluation (PIRE), on average, 206 people suffer death or serious injury from gunshots each year in the City of San José; and
8. Conservatively, San José taxpayers annually spend approximately \$39.7 million, or approximately \$151 per firearm-owning household, to respond to gun violence with such public services as emergency police and medical response, victim assistance, incident investigation, acute and long-term health care, and perpetrator adjudication and judicial sanctioning; and
9. Including private costs to individuals and families in the calculation, San José residents incur an annual financial burden of \$442 million per year for gun deaths and injuries; and
10. Injuries from unintentional shootings, which are generally insurable, comprise more than a third of all gun-related injuries nationally; and



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11. Auto insurers have used risk-adjusted premiums to reward good driving and incentivize use of airbags and other safety features, and by using a comprehensive public health approach to car safety the United States reduced per-mile auto fatalities by nearly eighty percent (80%) from 1967 to 2017; and
12. Liability insurance can reduce the number of gun incidents by encouraging safer behavior and it can also provide coverage for losses and damages related to gun incidents; and
13. Programs and services to gun owners and their households can also encourage safer behavior, and provide education and resources to those residents.

#### **10.32.205 Definitions**

As used in this Part, the following terms have the following meaning:

- A. "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. Firearm does not include antique firearms as defined by 18 U.S.C. Section 921(a).
- B. "Designated Nonprofit Organization" means an entity that qualifies as a nonprofit corporation under the federal internal revenue code and is designated pursuant to the City Manager's authority under Section 10.32.235. No City official or employee shall sit on the board of directors of the Designated Nonprofit Organization.

#### **10.32.210 Liability Insurance Required**

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- A. Insurance required. A person who resides in the City and owns or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a homeowner's, renter's or gun liability insurance policy from an admitted insurer or insurer as defined by the California Insurance Code, specifically covering losses or damages resulting from any accidental use of the Firearm, including but not limited to death, injury or property damage.
- B. For purposes of this Section, a person shall be deemed to be the owner of a Firearm if such Firearm is lost or stolen until such loss or theft is reported to the police department or sheriff which has jurisdiction in which such Firearm owner resides.
- C. Any person who owns a Firearm on the effective date of this Section shall obtain the insurance required by this Section within thirty (30) days of the effective date of this Ordinance, or by a later date certain established in the regulations promulgated by City Manager pursuant to Section 10.32.235.

**10.32.215 Annual Gun Harm Reduction Fee**

A person who resides in the City and owns or possesses a Firearm in the City shall pay an Annual Gun Harm Reduction Fee to the Designated Nonprofit Organization each year. The date by which payment shall be made annually shall be established in the regulations promulgated by City Manager pursuant to Section 10.32.235. The annual fee will be set forth in the schedule of fees and charges established by resolution of the City Council.

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**10.32.220 Expenditure of Gun Harm Reduction Fee**

- A. All monies from the Gun Harm Reduction Fee shall be expended by the Designated Nonprofit Organization on providing services to residents of the City that own or possess a Firearm in the City, to members of their household, or to those with whom they have a close familial or intimate relationship. Such expenditures may include, but are not necessarily limited to the following:
1. Suicide prevention services or programs;
  2. Violence reduction or gender based violence services or programs;
  3. Addiction intervention and substance abuse treatment;
  4. Mental health services related to gun violence; or
  5. Firearms safety education or training.
- B. No portion of the monies from the Gun Harm Reduction Fee shall be used for litigation, political advocacy, or lobbying activities.
- C. The Designated Nonprofit Organization shall spend every dollar generated from the Gun Harm Reduction Fee, minus administrative expenses, exclusively for programs and initiatives designed to (a) reduce the risk or likelihood of harm from the use of firearms in the City of San José, and (b) mitigate the risk of physical harm or financial, civil, or criminal liability that a San José firearm owner or her family will incur through her possession of firearms. Otherwise, the City shall not specifically direct how the monies from the Gun Harm Reduction Fee are expended.

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- D. The designated non-profit shall provide a biannual report to an appropriate council committee and the report may also be provided to the City Council, as directed by the council committee.

**10.32.225 Exceptions**

The provisions of this Part shall not apply to any of the following:

- A. Those persons designated as peace officers pursuant to Chapter 4.5 of Title 3 of Part 2 of the California Penal Code (§830 et seq.), including sworn peace officers, active reserve peace officers and retired peace officers.
- B. Those persons who have a license to carry a concealed weapon issued pursuant to California Penal Code § 26150 or § 26155, for as long as these statutes are legally enforceable.
- C. Those persons for which compliance with this Part would create a financial hardship.

**10.32.230 Compliance**

- A. Insurance requirement. Each person required to obtain and maintain insurance under Section 10.32.210 shall demonstrate compliance with the insurance requirement by completing and executing a City-designated attestation form. Each such person shall state both the name of the insurance company issuing the policy and the number of the insurance policy on the attestation form, sign the form under penalty of perjury and keep the attestation form with the Firearms where they are being stored or transported. Each person shall complete and sign a new attestation form under penalty of perjury in the event any of the information on the form changes. Each person shall present the form when

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lawfully requested to do so by a peace officer who knows or has reason to believe that a person possesses a firearm.

- B. Fee provisions. Each person shall affix proof of payment of the annual Gun Harm Reduction Fee to the attestation form and keep it with the Firearm or Firearms where they are being stored or transported.

**10.32.235 Authority of the City Manager**

- A. The City Manager is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Part relating to the reduction of gun harm, including, but not limited, to the following subjects:
1. Processes and procedures related to the implementation of the liability insurance requirement, and forms necessary thereto.
  2. Designation of the nonprofit organization that will receive the Gun Harm Reduction Fee, any processes and procedures related to the payment of the fee, and any additional guidelines or auditing of the use of the monies from the fee.
  3. Designation of any third-party agency and/or organization that will aid in the implementation of the noticing of the requirements of this Part or any other administrative tasks related to the requirements of this Part.
  4. The criteria by which a person can claim a financial hardship exemption from this Part pursuant to Section 10.32.225.C.
- B. Regulations shall be published on the City's website.

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- C. Regulations promulgated by the City Manager shall have the same force and effect of law. Unless a later date is specified in a regulation, a regulation shall become effective upon date of publication.

**10.32.240 Enforcement**

- A. Any violation of this Part shall be punishable by an administrative citation in accordance with the procedures set forth in Chapter 1.15 of Title 1 of this Code relating to the issuance of administrative citations, imposing of administrative fines, right to appeal, and the right to an administrative hearing.
- B. The amounts of the fines for violations imposed pursuant to this Part shall be set forth in the schedule of fines established by resolution of the City Council.
- C. A violation of this Part is also enforceable through all other civil and administrative remedies available to the City.

**10.32.245 Impoundment**

To the extent allowed by law, the Firearm or Firearms of a person that is not in compliance with this Part may be impounded subject to a due process hearing.

**10.32.250 Fees and Charges**

The City Manager is hereby authorized to charge and collect any and all cost recovery fees associated with fulfilling the policies of this Part relating to the reduction of gun harm, including any associated third-party costs. All fees shall be as set forth in the schedule of fees and charges established by resolution of the City Council.

NVF:TLC:KML  
2/3/2022

ORD. NO. 30716

**SECTION 2.** This Ordinance shall become effective at the expiration of one hundred eighty (180) days after its adoption.

**SECTION 3.** Consistent with Section 1.04.160 of the San José Municipal Code, should any provision of this Ordinance or its application to any person or circumstance be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 4.** The City Council of the City of San José takes action on this Ordinance based upon the totality of the administrative record including the facts stated above, the facts stated in the memorandums to the City Council for the January 25, 2022 City Council Meeting, as well as any oral or written testimony at the January 25, 2022 City Council meeting.

NVF:TLC:KML  
2/3/2022

ORD. NO. 30716

**PASSED FOR PUBLICATION of title this 25<sup>th</sup> day of January, 2022, by the following bifurcated vote:**

**Including Insurance Requirements; Excluding Sections 10.32.215, 10.32.220, and 10.32.230(b)**

AYES:	ARENAS, CARRASCO, COHEN, ESPARZA, FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.
NOES:	DAVIS.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

**PASSED FOR PUBLICATION of title this 25<sup>th</sup> day of January, 2022, by the following bifurcated vote:**

**Excluding Insurance Requirements; Sections 10.32.215, 10.32.220, and 10.32.230(b) only:**

AYES:	ARENAS, CARRASCO, COHEN, ESPARZA, JONES, JIMENEZ, PERALEZ, LICCARDO.
NOES:	DAVIS, FOLEY, MAHAN.
ABSENT:	NONE.
DISQUALIFIED:	NONE.



---

SAM LICCARDO  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk



**PROOF OF SERVICE**

CASE NAME: HOWARD JARVIS TAXPAYERS ASSN., et al., v. CITY OF SAN JOSE

CASE NO.: 22CV395596

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On March 21, 2022, I caused to be served the within:

**CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
OPPOSITION TO EX PARTE APPLICATION FOR ORDER APPROVING  
PUBLICATION OF SUMMONS**

☐ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ by PERSONAL DELIVERY, with a copy of this declaration, by causing to be personally delivered a true copy thereof to the person at the address set forth below.

☐ by FACSIMILE TRANSMISSION, with a copy of this declaration, to a facsimile machine at the facsimile machine telephone number listed below.

The above-described transmission was reported as complete without error by a transmission report issued by the facsimile machine immediately following the transmission.

☐ by ELECTRONIC SERVICE listed below, transmitted using the One Legal Process Service electronic filing system. The document(s) listed above was/were electronically served to the electronic address(s) below

☒ by ELECTRONIC TRANSMISSION, with a copy of this declaration, to an electronic address listed below.

I further declare that the electronic transmission was sent on March 21, 2022, before 5:30 p.m., and that the City of San Jose, City Attorney's electronic address is CAO.Main@sanjoseca.gov.

The above-described transmission was reported as sent by a transmission report available for printing from the computer.

☐ by EXPRESS MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ by OVERNIGHT DELIVERY, with a copy of this declaration, by depositing them into a sealed envelope/package, with delivery fees fully prepaid/provided for, and

☐ causing the envelope/package to be deposited for collection  
☐ causing the envelope/package to be delivered to an authorized courier or driver to receive the envelope/package

designated by the express service carrier for next day delivery.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for overnight delivery by an express courier service. Such correspondence would be deposited with the express service or delivered to the authorized express service courier/driver to receive an envelope/package for the express service that same day in the ordinary course of business.

Addressed as follows:

Jonathan M. Coupal  
 Timothy A. Bittle  
 Laura A. Dougherty  
 Howard Jarvis Taxpayers Foundation  
 921 Eleventh Street, Suite 1201  
 Sacramento, CA 95814  
 Tel: (916) 444-9950  
 Email: [tim@hjta.org](mailto:tim@hjta.org)

*Attorneys for Plaintiffs Howard Jarvis  
 Taxpers Assn., Silicon Valley Taxpayers  
 Assn., Silicon Valley Public Accountability  
 Foundation, Jim Barry, and George  
 Arrington*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2022, at San Jose, California.

Brian Ward  
 Brian Ward

MAR 23 2022

JONATHAN M. COUPAL, State Bar No. 107815  
TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. DOUGHERTY, State Bar No. 255855  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814  
Tel: (916) 444-9950  
Fax: (916) 444-9823  
Email: tim@hjta.org  
Attorneys for Plaintiffs

Filed  
March 25, 2022  
Clerk of the Court  
Superior Court of CA  
County of Santa Clara  
22CV395596  
By: rsandoval

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

HOWARD JARVIS TAXPAYERS ASSN.,  
SILICON VALLEY TAXPAYERS ASSN.,  
SILICON VALLEY PUBLIC ACCOUNTA-  
BILITY FOUNDATION, JIM BARRY, and  
GEORGE ARRINGTON,

Plaintiffs

v.

CITY OF SAN JOSE, and ALL PERSONS  
INTERESTED in the matter of San Jose  
Ordinance No. 30716, establishing an  
Annual Gun Harm Reduction Fee,

Defendants

No. 22CV395596

~~PROPOSED~~ ORDER APPROVING  
PUBLICATION OF SUMMONS

Department: 20  
Case Filed: March 7, 2022  
Trial Date: Not Set

Calendar preference per CCP § 867

**ORDER**

On the application of plaintiffs, which was considered 24 March, 2022, in Department 20 with notice to counsel for defendant City of San Jose, the Court having considered the authorities cited and good cause appearing therefor:

IT IS HEREBY ORDERED that plaintiffs' application for approval to publish summons as to All Persons Interested in the matter of San Jose Ordinance No. 30716 is GRANTED AS FOLLOWS:

1. Plaintiffs shall use the form of Summons attached hereto as Exhibit 1.
2. Plaintiffs shall cause the Summons to be published once a week for three consecutive weeks, with at least five days intervening between publication dates, in the Legal Notices section of the San Jose Mercury News.
3. Plaintiffs shall obtain Proof of Publication from said newspaper and file it with this Court immediately thereafter, or show good cause for their failure to do so.

DATED: 24 March, 2022.

Signed: 3/24/2022 12:38 PM



HON. Socrates Peter Manoukian  
JUDGE OF THE SUPERIOR COURT

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**EXHIBIT 1**

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN [A date to be determined that is 10 or more days after the completion of publication of the summons in the newspaper]. READ THE INFORMATION BELOW.**

**AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA [The date from above that is 10 or more days after the completion of publication of the summons in the newspaper]. LEA LA INFORMACIÓN QUE SIGUE.**

**TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.**

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City's Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response

1 to the complaint by [the date from above that is 10 or more days after the completion of  
2 publication of the summons in all newspapers]. If you do not file a timely written response  
3 with the court, plaintiffs may apply for entry of default and the relief sought by their  
4 complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using  
5 the address or telephone number shown below. If you respond to defend the legality or  
6 validity of the matter, you will not be subject to punitive action such as wage garnishment  
7 or seizure of real or personal property.

8  
9 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER**  
10 **CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY**  
11 **SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED**  
12 **OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.**

13  
14 **PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO**  
15 **RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO**  
16 **DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER**  
17 **PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN**  
18 **JUDICIAL.**

19  
20 The name and address of the Court is (El nombre y dirección del Tribunal es):

21  
22 Superior Court, County of Santa Clara

23 191 North First Street

24 San Jose, CA 95113

25 CASE NUMBER (Numero del Caso): 22CV395596  
26  
27

1 The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección  
2 y número de teléfono de los abogados del demandante es):

3  
4 Timothy A. Bittle

5 Howard Jarvis Taxpayers Foundation

6 921 11<sup>th</sup> Street, Ste. 1201

7 Sacramento, CA 95814

8 Tel: 916-444-9950  
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**PROOF OF SERVICE**

I am employed in San Mateo County, California, and I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

**DEFENDANT CITY OF SAN JOSE'S NOTICE OF THE FILING OF A NOTICE OF REMOVAL OF ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

✓ **BY MAIL:** I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

✓ **BY E-MAIL:** My e-mail address is kdelia@cpmlegal.com and service of this document(s) occurred on the date shown below. This document is being served electronically and the transmission was reported as complete and without error.

Jonathan M. Coupal Timothy A. Bittle Laura E. Dougherty Howard Jarvis Taxpayers Foundation 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Telephone: (916) 444-9950 Email: tim@hjta.org	Attorneys for Plaintiffs Howard Jarvis Taxpayers Association; Silicon Valley Taxpayers Association, Inc.; Silicon Valley Public Accountability Foundation; James Barry; and George Arrington
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on April 15, 2022.

/s/ Kathleen D'Elia

Kathleen D'Elia